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JUL 17 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of)

Federal-State Joint Board)
on Universal Service)

CC Docket No. 96-45 /

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. submits its Reply Comments pursuant to Order DA 00-1068, rel. May 12, 2000 (the Order). All telecommunications companies submitting initial comments agree that wire center line count information is commercially sensitive and should not be disclosed, or disclosed only under protective order. Clearly, industry participants regard these data as entitled to confidentiality. Moreover, other commenters either recognize that competitive neutrality requires symmetric treatment of all providers of local exchange service¹ both ILECs and CLECs, or fail to address the vital fact that the Commission's rules exempt CLECs from disclosure of wire center line count data except where they are seeking universal service funding. It is not explained how requiring disclosure of an ILEC's data while exempting its competitors fails to confer a competitive advantage. Other commenters likewise fail to recognize that extensive competitive entry fostered by the Commission and the Telecommunications Act has changed everything. Line count data which would have little value in the absence of competitors is increasingly valuable as competition flourishes. Availability of this information in the past should not govern how it is to be treated now, or in the future. Finally, the Vermont Public Service Board (VPSB) employs the wrong legal standards to the issues noticed for comment and its conclusions are entitled to little or no weight.

¹ Comments of Regulatory Commission of Alaska, p. 3.

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I. The industry regards wire center line count data as confidential

Commenting telecommunications carriers uniformly regard wire center line count data as commercially sensitive and entitled to confidential treatment.² AT&T, arguing the CLEC position, admits that ILEC wire center line count data (where no support is received) should only be available to other companies where the data must be used in the Commission's Synthesis Model. Even then, AT&T recognizes that the information should be subject to an appropriate protective order.³ That is all SBC asks: that the data be disclosed only as necessary in Commission proceedings and subject to the Commission's standard protective order. As explained at length in the Comments of Bell Atlantic, such limited protected disclosure is more than adequate to satisfy any legitimate need for release of this information.⁴

II. Failure to acknowledge or justify disparate treatment of information

As noted, one state commission commenter recognizes the unfairness of requiring ILECs to disclose while exempting CLECs.⁵ Others fail to even acknowledge that CLECs, unlike ILECs, do not have to provide wire center line count data where no universal support is received. (See, e.g., Comments of Vermont Public Service Board). These Commenters thus ignore a vital factor exacerbating the competitive harm that ILECs will suffer if their information is released without protection -- the ILEC's competitors will have its data for competitive purposes but the ILEC has no

² Besides SBC industry commenters are Anchorage Telephone Utility, AT&T, Bell Atlantic and GTE.

³ AT&T Comments, pp. 3, 7.

⁴ Comments of Bell Atlantic, pp. 5 - 7.

⁵ Comments of Regulatory Commission of Alaska, p. 3.

corresponding access to the competitors' data. This lack of reciprocity alone mandates protection of the ILEC's information.⁶

It also helps dispose of claims that the equivalent of wire center line count information is available to competitors from other sources. In the first place, such claims are not accurate. Wire center line count data reflect the exact number of working lines a LEC has in a small geographical area and how that number changes on a quarterly basis. This detailed, company specific, information is not present in public sources nor can it be readily derived from them. Even if a competitor could, through effort, glean a rough approximation of this information from other sources, the information would still be commercially sensitive. With disclosure, the competitor has easy access to exact information of commercial value when otherwise only a rough approximation at best could be obtained and that through perhaps considerable expense and effort. That advantage alone makes the information commercially sensitive.⁷ It is made more so because disclosure would give CLECs on a platter valuable commercial information about the numbers and locations of ILEC customers, while a competitor would have to work and incur additional costs to obtain only much less exact information about the CLEC's business.

III. Effect of increased competitive entry

Commenters supporting unprotected disclosure also ignore the fact that constantly increasing competitive entry fostered by the Telecommunications Act and the Commission's pro-competitive policies has made irrelevant past practices concerning

⁶ See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 47 ("Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.")

⁷ The Vermont Public Service Board's Comments ignore this point. Even if a CLEC could obtain the equivalent of wire center line count data (where no support is received) from alternative sources -- and it cannot-- the cost savings from unprotected availability of this data still give it great commercial value.

availability of wire center line count data. This information is more commercially sensitive today than ever and its value will only increase as additional competitors enter the market for local service. As GTE's Comments point out, the Commission has recognized in the past the proprietary nature of wire center line count data and protected similar data submissions from public disclosure.⁸ With competition on the rise, there is no reason now to recede from this policy and every reason to continue it.

IV. The Vermont Public Service Board advocates the wrong standards

The principles that govern whether information submitted to the Commission should be protected from public disclosure are correctly set out in the Public Notice, pp. 3 - 4. The VPSB attempts to subject this inquiry to different or additional standards. For example, under FOIA commercial information is confidential if disclosure is "likely to cause substantial harm to the competitive position of the person from whom the information was obtained." (Public Notice, p. 3). As Bell Atlantic correctly notes, this standard does not require that actual competitive harm be shown, but only actual competition and a likelihood that substantial competitive injury will result from disclosure.⁹ The VPSB attempts to substitute for this a requirement that specific instances of harm must be demonstrated. There is no such requirement under the law and the VPSB is wrong. Moreover, the owner of commercially sensitive information is unlikely to know about specific instances where competitors have been advantaged through possession of the information. Only the competitor will know.

Equally wrong is the VPSB's attempt to require a showing that "[t]he claimant has taken systematic precautions to protect the allegedly confidential information, such as

⁸ Comments of GTE, pp. 3 - 4; *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-160, DA 99-1406, ¶ 8, rel. July 19, 1999.

⁹ Comments of Bell Atlantic, p. 2, n. 2; *GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9th Cir. 1994); *Gulf & W. Indus. v. United States*, 615 F. 2d 527, n. 530 (D.C. Cir. 1980)

by subjecting employees to confidentiality agreements. . .”¹⁰ There is simply no such element in the FOIA confidentiality analysis.

The VPSB goes on to argue that to get protection for its commercially sensitive information the owner must show that there is “no countervailing public policy justifying disclosure.”¹¹ It is clear from the Notice, and the authorities cited therein, that the opponent of disclosure has no such burden. To the contrary, in the case of confidential information, the *proponent of disclosure* must make a persuasive showing that there is a *compelling public interest* in releasing the information. (Public Notice, pp. 3 - 4). The VPSB’s mistaken description of this principle, its improper shifting of the burden of proof, as well as the other legal errors noted above, vitiate its Comments.

V. Conclusion

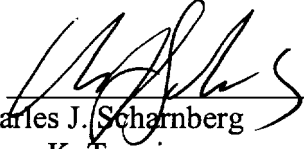
The Comments indicate that wire center line count data are generally regarded as confidential by the industry, ILECs and CLECs alike. It seems that only a handful of state commissions have a different view. These commissions fail to acknowledge the lack of reciprocity, and resulting competitive imbalance, that will exist if ILEC data becomes publicly available since CLEC data need not be submitted at all. They likewise fail to acknowledge the increasing value of the data as competitive entry accelerates. Moreover, the state commission filing the most extensive comments, the VPSB, applied the wrong legal standards. For these reasons, comments advocating unprotected disclosure of these data are entitled to little weight. Finally, there has been no persuasive showing that the public interest requires unprotected disclosure of wire center line count data (where no support is received). Any legitimate need for this information can readily be satisfied through disclosure under protective order.

¹⁰ VPSB’s Comments, p. 3.

¹¹*Id* p.3.

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CERTIFICATE OF SERVICE

I, Regina Ragucci, do hereby certify that a copy of SBC's Reply Comments has been served via first class mail-postage prepaid on the parties attached on July 17, 2000.


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